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EXAMINER	
CORDRAY, DENNIS R	

  

ART UNIT	PAPER NUMBER
1791	

  

NOTIFICATION DATE	DELIVERY MODE
10/15/2007	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@weyerhaeuser.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/748,930	STOYANOV ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Dennis Cordray	1791	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-16,19 and 20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-16,19 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments filed 8/1/2007 have been fully considered but they are only partially persuasive.

Applicant argues that Hansen et al ('256) teaches away from using crosslinking temperatures greater than 180 °C. Hansen et al discloses curing temperatures from about 140 °C to about 180 °C. The instant claims recite curing temperature from about 182 °C to about 215 °C. The term "about 180 °C" is considered by the Examiner to overlap 182 °C and even temperatures a few degrees higher, while "about 182 °C" is considered by the Examiner to overlap 180 °C and even temperatures a few degrees lower. Thus the disclosed curing temperatures of Hansen et al significantly overlap the claimed range or, at least, one of ordinary skill in the art at the time of the invention would "clearly envisage" crosslinking temperature within the claimed range from the disclosure of Hansen et al.

The relationship between time and temperature during crosslinking of cellulosic fibers is well known in the art, as taught by Cook et al ('740), col 13, lines 32-49. For instance, for temperatures from about 145°C to about 165 °C, a curing time between about 30 and about 60 minutes is sufficient; for temperatures from about 170°C to about 190 °C, a time between about 2 and about 20 minutes is used. An upper limit of 225 °C is taught to prevent darkening or damaging of the fibers. It would also have been obvious to one of ordinary skill to obtain the crosslinked fibers without scorching by

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curing at the claimed temperatures for an appropriately shorter time than used for the disclosed temperature range.

Applicant argues that the whiteness properties are not disclosed by Hansen et al and that an unexpected synergistic effect is seen when crosslinking fibers in the presence of sorbitol. Claim 1 is a product-by-process claim directed to a product. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or an obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. In re Thorpe, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show unobvious differences between the claimed product and the prior product. In re Marosi, 218 USPQ 289,291 (Fed. Cir. 1983). In the instant case, Hansen et al discloses a process wherein, in some embodiments, cellulosic fibers are crosslinked by a a polycarboxylic acid in the presence of a C<sub>4</sub>-C<sub>12</sub> polyol. The polycarboxylic acid is either part of a two component binder (a polycarboxylic acid and a polyol) or supplied as a crosslinking agent known in the art, such as citric acid (col 38, lines 22-37; col 39, lines 12-14). Whether the polyol actually crosslinks is irrelevant to the claims, which only require its presence. Hansen states "Curing in the presence of the binder is not usually a problem because the binder cannot participate in the intrafiber crosslinking reaction..." Where the binder can also crosslink fibers, Hansen et

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al discloses using fibers with a higher moisture content so that adequate binder will remain in the fibers to bind particles to the fibers (col 42, lines 31-63).

Hansen et al thus discloses the claimed process in as much detail as currently claimed and it is the examiner's position that the crosslinked fibers of Hansen et al are substantially identical to or only slightly different than the claimed fibers prepared by the method of the claim, because both products are formed from the same materials using the same methods. The whiteness properties of the product of Hansen et al will thus be the same as the claimed properties because, where the claimed and prior art apparatus or product are identical or substantially identical in structure or composition, a *prima facie* case of either anticipation or obviousness has been established. *In re Best*, 562 F.2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977). In other words, when the structure recited in the reference is substantially identical to that of the claims, the claimed properties or functions are presumed to be inherent.

Applicant argues that the binders are present in an amount from 3-80 percent only in a preferred embodiment using non-crosslinked fibers. Since the purpose of the binder is to bind particles to the fibers, and crosslinked fibers containing binders are also disclosed, a similar amount would inherently or obviously be needed for crosslinked fibers as well.

Applicant argues that Hansen et al does not state that a combination of polycarboxylic acid and polyol are reacted in the curing step. The instant claims only recite crosslinking in the presence of a polyol, a step that is also disclosed by Hansen et al.

Applicants arguments with respect to the disclosed wet bulk examples are convincing. The cited examples are not included in the current rejections and are not required. For reasons previously given, the fibers of Hansen et al will possess the claimed wet bulk.

With respect to the combination of Hansen et al and Smith, Smith was used only to demonstrate crosslinking agents generally known to those of ordinary skill in the art.

Applicants disagree with the citation of the Abstract and column 10, lines 26-40 of Hansen et al ('326). The two references give background support for cellulosic fibers comprising particle binders. Support for crosslinking the fibers is in the third cited reference, column 45, lines 30-33. The three citations are to be taken collectively, rather than each separately teaching crosslinked cellulosic fibers comprising particle binders.

Hansen et al ('256) and Hansen et al ('326) are directed to cellulosic fibers comprising particle binders. The fibers can be crosslinked with a polycarboxylic acid in the presence of a C<sub>4</sub>-C<sub>12</sub> polyol. Hansen et al ('256) recites saccharides and disaccharides as binders. Hansen et al ('326) recites sorbitol as a binder. The nonpolymeric binders of Hansen ('256) have at least two functional groups, such as an alcohol, a carboxylic acid, an amino acid, an amide or an amine, that form hydrogen or coordinate covalent bonds (col 15, lines 48-59). The binders of Hansen ('326) have at least two functional groups, such as a hydroxyl (alcohol), a carboxyl, a carboxylate, a carbonyl, or an amide, that form hydrogen or coordinate covalent bonds (col 15, lines 48-59). The functional groups required of the binders of both patents overlap, in

particular the OH groups. The binders are used for the same purpose, to bind particles to the fibers. Why would it not have been obvious to substitute one binder (sorbitol) for another, both being used for the same purpose? With regard for the other claimed species, the structures are similar, with the number of carbon atoms and OH groups differing. The results of using any one of them in the process of Hansen et al ('256 or '326) would have been predictable. Why would it not have been obvious to one of ordinary skill in the art to use any of the claimed species as functionally equivalent options? The crosslinked fibers so made are substantially identical to the claimed fibers, thus have the claimed properties. The Examiner agrees with the argument that each of the claimed species has from 5 to 7 hydroxyl groups. This statement has been amended.

Applicants argue that the cited references do not state that the binders and crosslinking agents can be added separately. A few sentences above, the Examiner stated that the particle binders can be added before, after or simultaneously with curing. Since the curing step involves interaction with a crosslinking agent, and the crosslinking agent must be present at the time of curing, embodiments are presented wherein the binders are added separately from the crosslinking agent. However, the contested statement is not required for the rejection and has been deleted.

While preferred crosslinking agents are disclosed, Hansen et al does not criticize, discredit, or otherwise discourage the use of citric acid or other known crosslinking agents. Disclosed examples and preferred embodiments do not constitute a teaching away from a broader disclosure or nonpreferred embodiments. In re Susi, 440 F.2d 442,

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169 USPQ 423 (CCPA 1971). "[t]he prior art's mere disclosure of more than one alternative does not constitute a teaching away from any of these alternatives because such disclosure does not criticize, discredit, or otherwise discourage the solution claimed...." In re Fulton, 391 F.3d 1195, 1201, 73 USPQ2d 1141, 1146 (Fed. Cir. 2004).

The rejections are maintained, but have been modified to omit some contested statements and to more clearly present the Examiner's position.

***Claim Rejections - 35 USC § 103***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-7, 9-10, 16 and 19-20 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hansen et al (5589256).

Hansen ('256) et al discloses crosslinked cellulosic fibers comprising particle binders (Abs; col 37, lines 30-43; col 38, line 16 to col 41, line 16). One or more particle binders can be used, including  $\alpha$ -hydroxy polycarboxylic acids (citric or tartaric acid are



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recited as examples) and polyols and polyhydric alcohols (monosaccharide and disaccharide are recited as examples that are C<sub>4</sub>-C<sub>12</sub> acyclic polyols per the definition given on p 4, lines 12-13 of the instant Specification) (col 15, lines 41-45; col 16, lines 57-67; col 20, lines 34-40). Groups of particle binders are preferably used together, such as a polycarboxylic acid and a polyol (col 19, lines 54-61 and particularly line 61). The binders are added in an amount from 3-80% by weight of the fibers, particles and binders, and preferably from 3-25% by weight (col 4, lines 41-49; col 5, lines 3-6). The particles are preferably added in an amount from 5-80% by weight. A preferred weight ratio of particles to binder is 2:1 to 4:1. Thus, the amount of binder present significantly overlaps the claimed amount.

Citric acid, or other crosslinking agents known in the art are also applied to the fibers at a fiber treatment zone (col 38, lines 16-43). The fibers are cured (crosslinked) within a range of about 140 to about 180 °C (col 40, lines 62-66). The term "about 180 °C" is considered by the Examiner to overlap the claimed "about 182 °C" and even temperatures a few degrees higher, while "about 182 °C" is considered by the Examiner to overlap about 180 °C and even temperatures a few degrees lower. Thus the disclosed curing temperatures of Hansen et al significantly overlap the claimed range or, at least, one of ordinary skill in the art at the time of the invention would "clearly envisage" crosslinking temperature within the claimed range from the disclosure of Hansen et al.

The particle binders can be added before, after or simultaneously with curing (col 42, lines 31-34). Where the binders can also function as an interfiber crosslinking

agent, the fibers should contain at least 20% by weight of water, which inhibits ester bond formation and ensures that adequate binder will remain in the fibers to bind the particles to the fibers (col 42, lines 38-57). Thus, in some embodiments, the fibers are crosslinked in the presence of the particle binder that comprises an  $\alpha$ -hydroxy polycarboxylic acid and a polyol. In other embodiments, the fibers are crosslinked in the presence of a polyol such as saccharide or disaccharide. Combined Claims 38 and 44 recite that a binder and crosslinking agent are applied to the fibers, the treated fibers are cured (in the presence of the binder) and that sufficient functionality remains in the binder to bind a substantial portion of the particles to the fibers.

Hansen ('256) et al does not disclose the wet bulk, Whiteness Index, L value, a-value or b-value of the fibers. The reference discloses all the structural limitations of the claims (in this case, cellulosic fibers crosslinked with an  $\alpha$ -hydroxy polycarboxylic acid in the presence of 1 to 10% C<sub>4</sub>-C<sub>12</sub> polyol by weight of the fibers. The crosslinked fibers of Hansen et al will have the claimed wet bulk whiteness and color properties because, where the claimed and prior art apparatus or product are identical or substantially identical in structure or composition, a *prima facie* case of either anticipation or obviousness has been established. *In re Best*, 562 F.2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977). In other words, when the structure recited in the reference is substantially identical to that of the claims, the claimed properties or functions are presumed to be inherent (MPEP 2112- 2112.01).

Claim 1 is a product-by-process claim. The product of Hansen et al appears to be the same as or similar to the claimed product, crosslinked cellulosic fibers, although

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produced by a different process. The burden therefore shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product. In re Marosi, 710 F.2d 798, 802, 218 USPQ 289, 292 (Fed. Cir.1983). "In the event any differences can be shown for the product of the product-by-process claim 1 as opposed to the product taught by the reference Hansen et al, such differences would have been obvious to one of ordinary skill in the art as a routine modification of the product in the absence of a showing of unexpected results: see also In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985)"

Claims 1, 3-7, 10-12, 16 and 19-20 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hansen et al (5789326).

Hansen et al ('326) discloses crosslinked cellulosic fibers comprising particle binders (Abs; col 10, lines 26-40; col 45, lines 30-33). Particle binders include  $\alpha$ -hydroxy polycarboxylic acids (citric is recited as an example) and polyols (sorbitol is claimed) (col 46, lines 7-15; Claims 3 and 4). The binders are added in an amount from 1-80% by weight of the fibers, and preferably from 1-25% by weight (col 4, lines 49-53). Thus, the amount of binder present significantly overlaps the claimed amount.

The crosslinking agent can be citric acid (an  $\alpha$ -hydroxy polycarboxylic acid) or any other crosslinking agent known in the art (col 42, line 61 to col 43, line 14 and particularly col 43, line 8). The fibers are cured (crosslinked) within a range of about 140 to about 180 °C (col 45, lines 6-10). Per the discussion above, the disclosed curing

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temperatures of Hansen et al significantly overlap the claimed range or, at least, one of ordinary skill in the art at the time of the invention would "clearly envisage" crosslinking temperatures within the claimed range from the disclosure of Hansen et al.

The particle binders can be added before, after or simultaneously with curing (col 45, line 66 to col 46, line 3). Where the binders can also function as an interfiber crosslinking agent (citric acid and polyols, are recited as examples), the fibers should contain at least 20% by weight of water, which inhibits ester bond formation and ensures that adequate binder will remain in the fibers to bind the particles to the fibers (col 46, lines 12-29). Thus, in some embodiments, the fibers are crosslinked in the presence of the particle binder that comprises sorbitol.

Hansen ('326) et al does not disclose the wet bulk, Whiteness Index, L value, a-value or b-value of the fibers. The reference discloses all the structural limitations of the claims (in this case, cellulosic fibers crosslinked with an  $\alpha$ -hydroxy polycarboxylic acid in the presence of 1 to 10% C<sub>4</sub>-C<sub>12</sub> polyol by weight of the fibers. The crosslinked fibers of Hansen et al will have the claimed wet bulk whiteness and color properties for reasons given previously.

Claim 1 is a product-by-process claim. The product of Hansen et al appears to be the same as or similar to the claimed product, crosslinked cellulosic fibers, although produced by a different process. The burden therefore shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product. In re Marosi, 710 F.2d 798, 802, 218 USPQ 289, 292 (Fed. Cir.1983). "In the event any differences can be shown for the product of the

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product-by-process claim 1 as opposed to the product taught by the reference Hansen et al, such differences would have been obvious to one of ordinary skill in the art as a routine modification of the product in the absence of a showing of unexpected results: see also *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985)”

Claims 8-9 are rejected under 35 U.S.C. 103(a) as unpatentable over Hansen et al ('256 or '326) in view of Smith et al (US 2002/0090511).

Hansen et al ('256 or '326) do not disclose malic acid as a crosslinking agent. Hansen et al ('326) does not teach tartaric acid.

Smith et al discloses that citric, malic and tartaric acids are crosslinking agents for cellulosic fibers p 6, pars 71 and 74; pp 13-14, Tables 3 & 4).

The art of Hansen et al ('256 or '326), Smith et al and the instant invention is analogous as pertaining to the crosslinking of cellulosic fibers. The claimed polycarboxylic acids are all  $\alpha$ -hydroxy polycarboxylic acids and one of ordinary skill in the art would have expected them to function similarly. It would have been obvious to one of ordinary skill in the art to use any of the claimed acids as a crosslinking agent for the fibers of Hansen et al ('256 or '326) in view of Smith et al as well known and functionally equivalent options and have a reasonable expectation of success.

Claims 13-15 are rejected under 35 U.S.C. 103(a) as unpatentable over Hansen et al ('326).

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The disclosure of Hansen et al ('326) is detailed above. Hansen et al ('326) does not disclose the specific acyclic polyols and heterosides of the instant Claims.

Hansen et al ('326) discloses crosslinked cellulosic fibers comprising particle binders that include sorbitol.

It would have been obvious to one of ordinary skill in the art that the other claimed species of polyol (erythritol, xylitol, arabinitol, ribitol, Mannitol, perseitol, volemmitol, maltitol, myo-inositol and lactitol), having structures and functionality similar to sorbitol (with varying numbers of carbon atoms and hydroxyl groups on adjacent carbon atoms), would be expected to act similarly to sorbitol as a binder. It would thus have been obvious to one of ordinary skill in the art to substitute any of the claimed polyols for sorbitol as a particle binder in the fibers of Hansen et al ('326) as a functionally equivalent option with predictable results.

Claims 11-15 are rejected under 35 U.S.C. 103(a) as unpatentable over Hansen et al ('256) in view of Hansen et al (5789326).

The disclosures of Hansen et al ('256) and Hansen et al ('326) are detailed above. Hansen et al ('256) does not disclose the specific acyclic polyols and heterosides of the instant Claims.

Hansen et al ('326) discloses crosslinked cellulosic fibers comprising particle binders that include sorbitol.

The art of Hansen et al ('256), Hansen et al ('326) and the instant invention is analogous as pertaining to crosslinking cellulosic fibers in the presence of a polyol. It

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would have been obvious to one of ordinary skill in the art at the time of the invention to use sorbitol as a particle binder in the fibers of Hansen et al ('256) in view of Hansen et al ('326) as a functionally equivalent option and have a reasonable expectation of success. It would also have been obvious to one of ordinary skill in the art that the other claimed species of polyol (erythritol, xylitol, arabinitol, ribitol, Mannitol, perseitol, volemitol, maltitol, myoinositol and lactitol), having structures similar to sorbitol (with the number of carbon atoms and OH groups differing), would be expected to act similarly as a binder. It would thus have been obvious to one of ordinary skill in the art to substitute any of the claimed polyols for sorbitol as a particle binder in the fibers of Hansen et al ('256) in view of Hansen et al ('326) as a functionally equivalent option with predictable results.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 1, 5-8 and 10-15 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over

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(renumbered) claims 1-9 and 11-12 of copending Application No. 10/748977, as detailed in the previous Office Actions. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claimed fibers in the instant invention are obvious by the method claimed in the copending application (i.e.-by following the method in the copending application, a person with ordinary skill in the art would expect to make the claimed fibers). The claims of the copending application recite crosslinking cellulosic fibers in the presence of a C<sub>4</sub> to C<sub>12</sub> polyol, the crosslinking agents and polyols being the same as those of the instant invention.

9. Claims 1, 5-8, 10-12 and 16 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of copending Application No. 10/815206. The claims of the copending application recite an additional step of bleaching the cellulosic fibers that have been crosslinked in the presence of a C<sub>4</sub> to C<sub>12</sub> polyol, the crosslinking agents and polyols being the same as those of the instant invention. The instant application does not exclude the use of bleached fibers or of bleaching the fibers, therefore the fibers of the copending application are a species of the fibers of the instant application and would have the claimed properties (i.e.-Whiteness Index greater than about 69.0 and L-value greater than about 94.5) of the instant application.

10. Claims 1, 3-8, 10, and 12-16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14 of



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copending Application No. 10/748969. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claimed fibers in the instant invention are included in the fiber containing product claimed in the copending application and it would be obvious to make an absorbent product as a typical application of crosslinked cellulosic fibers.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Cordray whose telephone number is 571-272-8244. The examiner can normally be reached on M - F, 7:30 -4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on 571-272-1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
DRC

  
ERIC HUG  
PRIMARY EXAMINER